

AMOS EDWARDS—SURETIES OF.

DECEMBER 27, 1831.

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Mr. DANIEL, from the Committee on the Judiciary, to which had been referred the case of the sureties of Amos Edwards, made the following

REPORT:

The Committee on the Judiciary, to whom was referred the petition of William W. Whitaker, James Wilson, and Joseph D. Hamilton, a part of the securities of Amos Edwards, collector of the direct taxes and internal duties for the sixth district in the State of Kentucky, have had that matter under consideration, and ask leave to report the result:

Amos Edwards was appointed by the President of the United States collector of the sixth district of Kentucky, on the 8th of November, 1813, *during the recess of the Senate*, under the act of the 22d of July of the same year, for the assessment and collection of direct taxes and internal duties. In the 2d section it is provided, "That one collector, &c. shall be appointed in each district, and, if the appointment of the said collectors, or any of them, shall not be made during the present session, the President of the United States shall be, and is hereby, empowered to make such appointment during the recess of the Senate, by granting commissions which shall *expire at the end of their next session.*"

The 18th section of the same act further provides, "That each collector, &c. shall give bond, with one or more good and sufficient sureties, &c. in at least double the amount of the taxes assessed in the collection district for which he may be appointed; which bond shall be payable to the United States, with condition *for the true and faithful discharge of the duties of his office according to law, and, particularly, for the due collection and payment of all moneys assessed upon such district,*" &c. Various subsequent acts passed in 1813, laying internal duties, and containing provisions enlarging the authority of the collectors; and, by the act of the 2d August, the liability under the bond of the collector is extended, and includes "the due collection and payment over of the moneys arising within their respective districts, from the several duties above recited; and, in cases of failures in the said due collection and payment, the said bonds shall be deemed to be forfeited to the United States, and may be sued, and judgment recovered thereupon, in the manner pointed out by this act." Amos Edwards, in pursuance of the several acts to which reference has been made, in the recess of the Senate, on the 30th of November, 1813, and by virtue of his appointment

by the President, (also during the recess,) executed bond to the United States, with Arm'd Moorehead, William W. Whitaker, James Wilson, and Thomas Slaughter, his sureties, conditioned that, "if the said collector has truly and faithfully discharged, and shall continue truly and faithfully to discharge the duties of said office according to law, and shall, particularly, faithfully collect and pay, according to law, all moneys assessed upon such district," &c.

The commission under which this bond was executed expired by law at the end of the *next session of the Senate*, which ended on the fourteenth of April, 1814. Mr. Edwards was nominated by the President to the Senate during that session, and was confirmed by that body on the twenty-first of January, 1814. The responsibility of the sureties was to the end of the next session of the Senate, after the execution of the bond, and no longer. The commission then expired, as has been shown; and with it expired the further liability of the sureties. The conditions of the bond had been complied with to the *end of the next session of the Senate*. The collector, without executing another bond, proceeded to collect the direct taxes and internal duties till the sixth of November, 1816, at which time, under his new appointment, he executed a second bond, with William W. Whitaker, James Wilson, Arm'd Moorehead, Jos. D. Hamilton, William Harrison, and Wiley I. Barner, his sureties, with the following conditions: that the collector "has truly and faithfully discharged, and shall continue truly and faithfully to discharge the duties of said office according to law, and shall, particularly, faithfully collect and pay, according to law, all moneys assessed upon said district, then," &c.

It appears that the collector, prior to the execution of this bond, had collected, and had failed to pay to the United States, the sum of \$3,782 61 cents. This defalcation did not take place under the legal operation of either bond executed with sureties by the collector; therefore, the petitioners ask to be credited with this sum, with the interest charged on it by the United States; also, the sum of \$869 86, with the interest charged on it by the Government, for delinquents in the district of said collector, and for which he has received no credit. In 1820, suit was brought by the Government against the sureties of said Edwards, for the sum of \$4,898 09, the balance claimed by the Government against them. The sureties, unable to obtain any information from said Edwards, who was then insolvent, and who seemed to have abandoned his own and their interest, embraced what they believed at the time, a lenient proposition from the Treasury Department, and executed their bonds to the Government for the said balance; payable, with interest, in one, two, and three years; in these bonds were included the sums, with interest, for which the petitioners claim a credit.

The conditions of the bonds of the collector are retrospective and prospective. The committee are of the opinion that the retroactive condition of the bond is not obligatory on the sureties of the collector. By the several acts referred to, the collector was required to give bond, with good and sufficient sureties, for the faithful performance of the duties of his office according to law. To go beyond the condition of the bond fixed by law, the Treasury Department had no authority. If the department possessed such an authority as to incorporate conditions in a statutory bond different from those prescribed by the statute, the legislative will would often be defeated, and a general responsibility created, where the act intended it should

be limited; and that part of the statute limiting the conditions of the bond would be, by such a construction, rendered vain and nugatory. It appears that said Edwards would have been entitled to a credit for the sum of \$869 86 cents, the amount of delinquencies in his district, had he made out and returned, in due and proper time, the list of delinquents.

A gentleman by the name of Leftwich had, as his deputy, transacted the business of the district. He left the United States without completing the business, and it was uncertain whether he would ever return. Edwards, the collector, did not transact the business; therefore, could not make out and return the list of delinquents, so as to entitle the petitioners to claim this credit.

He, the said deputy, has since returned to the United States, and furnished them with a list to the amount aforesaid, verified by his oath. It is a sum which never could be collected, and for which, had the collector complied with the forms of law, a credit must have been given. His failure to comply in this respect occasioned no loss to the Government, and should inflict none upon the sureties. This case was referred to the Committee of Ways and Means, at the 1st session of the 20th Congress, (see Reports of Committees, 3d vol. Rep. No. 166.) This committee reported adverse to the prayer of the petitioners. The principles adopted by them in arriving to the conclusion, are in direct opposition to the principles settled by the Supreme Court of the United States, in the case of the United States *vs.* Kirkpatrick, (9th vol. Wheaton's Reports, page 729.) They are, also, opposed to the precedent of Congress, established in the case of the heirs and legal representatives of Louis Chretien, deceased, (see the report of the Committee of Ways and Means in the year 1825, and the law which passed in pursuance of its recommendation.) It is clear, in the opinion of the committee, that, if the petitioners had resisted the right of the United States to recover the sum of \$3,782 61, which was the amount of defalcation prior to their executing the bond of the 6th of November, 1816, as the sureties of said Edwards, it never could have been recovered; and their claim to this credit, with the interest that has accrued upon it to the Government, is not weakened by submitting to the proposition of the Treasury Department, and executing their bonds for the payment of the balance, as then appeared to be due. Their claim to a credit for the delinquent list, amounting to the sum of \$869 86, with the interest as charged by the Government, in the opinion of the committee, should, also, be credited on their bonds. They, therefore, report a bill.

